

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
at CHATTANOOGA

BRYANT A. COOK,

Plaintiff,

v.

JEFFREY M. BRANDT,

Defendant.

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No. 1:07-cv-97
Mattice/Lee

MEMORANDUM AND ORDER

The court is in receipt of a *pro se* prisoner's civil rights complaint filed pursuant to 42 U.S.C. § 1983, which the Clerk is **DIRECTED** to file as of the date the complaint was received.

Plaintiff Bryant A. Cook ("Cook") is an inmate at the Lee United States Prison in Jonesville, Virginia. He has filed a *pro se* civil action against his former attorney who represented him in an § 2255 action for "legal malpractice, a breach of fiduciary duty, fraud and conversion." (Court File No. 3). Cook seeks \$100,000.00 in actual damages and \$50,000.00 in punitive damages.

I. Application to Proceed In Forma Pauperis

It appears from the application to proceed *in forma pauperis* submitted by Cook that he lacks sufficient financial resources at the present time to pay the required filing fee of \$350.00. Cook is not relieved of the ultimate responsibility of paying the \$350.00 filing fee. Since Cook is an inmate or prisoner in custody at the United States Penitentiary (USP)-Lee in Jonesville, Virginia, he is **ASSESSED** the civil filing fee of \$350.00 under the Prisoner Litigation Reform Act, Pub. L. 104-134, 110 Stat. 1321, codified in 28 U.S.C. § 1915. Cook shall pay the full filing fee of three-hundred

and fifty dollars (\$350.00) pursuant to Prisoner Litigation Reform Act, Pub. L. 104-134, 110 Stat. 1321, codified in 28 U.S.C. § 1915.

Pursuant to 28 U.S.C. § 1915(b)(1)(A) and (B), the custodian of Cook's inmate trust account at the institution where he now resides shall submit to the Clerk, United States District Court, Post Office Box 591, Chattanooga, Tennessee 37401-0591, as an initial partial payment, whichever is the greater of

- (a) twenty percent (20%) of the average monthly deposits to Cook's inmate trust account; or
- (b) twenty percent (20%) of the average monthly balance in Cook's inmate trust account for the six-month period preceding the filing of the complaint.

Thereafter, the custodian shall submit twenty percent (20%) of Cook's preceding monthly income (or income credited to his trust account for the preceding month), but only when such monthly income exceeds \$10.00, until the full filing fee of \$350.00 as authorized under 28 U.S.C. § 1914(a) has been paid to the Clerk. 28 U.S.C. § 1915(b)(2).

The Clerk of Court is **DIRECTED** to send a copy of this memorandum and order to the Warden and Custodian of Records at the United States Penitentiary (USP)-Lee in Jonesville, Virginia, and the Commissioner of the Bureau of Prisons to ensure the custodian of Cook's inmate trust account complies with the portion of the Prison Litigation Reform Act relating to payment of the filing fee.

The agency having custody of the plaintiff **SHALL** collect the filing fee as funds become available. This order shall become a part of inmate Cook's file and follow the inmate if he is

transferred to another institution. The agency having custody of the plaintiff shall continue to collect monthly payments from plaintiff's prisoner account until the entire filing fee of \$350.00 is paid.¹

The plaintiff is **ORDERED** to notify this Court and defendant or defendant's attorney of any change of address if he is transferred to another institution, and to provide the prison officials at any new institution with a copy of this order. Failure of the plaintiff to notify this Court of an address change and/or the new prison officials of this order and outstanding debt, will result in the imposition of appropriate sanctions against plaintiff without any additional notice or hearing by the Court.

In addition, the Clerk is **DIRECTED** to send the plaintiff a service packet (a blank summons and USM 285 form) for the defendant named in this action. The plaintiff is **ORDERED** to complete the service packet and return it to the District Court Clerk, P.O. Box 591, Chattanooga, TN 37401, within **twenty (20) days** of the date of receipt of this order. The summons will then be signed and sealed by the Court Clerk and forwarded to the United States Marshal for service. FED. R. CIV. P. 4. Cook is forewarned that failure to return the completed service packet within the time required could jeopardize his prosecution of this action.

Defendant **SHALL** answer or otherwise respond to the complaint within **forty-five (45) days** from the date of service.

¹ **Send remittances to the following address:**

Clerk, U.S. District Court
P.O. Box 591
Chattanooga, TN 37401-0591

All checks or other forms of payment shall be payable to "Clerk, U.S. District Court."

Cook is **ORDERED** to inform the Court, and the defendant or defendant's counsel of record, immediately of any address changes. Failure to provide a correct address to this Court within ten (10) days following any change of address will result in the dismissal of this action.

ENTER:

/s/Harry S. Mattice, Jr.
HARRY S. MATTICE, JR.
UNITED STATES DISTRICT JUDGE